

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

DONALD BRANDT,)	CASE NO. 05-MJ-186-JPD-2
)	
Petitioner,)	
)	
v.)	ORDER DENYING MOTION
)	FOR RETURN OF PROPERTY
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

On April 20, 2005, the Court issued a search warrant that permitted federal agents to search for and seize certain property belonging to petitioner. Dkt. No. 1. Federal agents subsequently seized various property from petitioner in connection with their investigation. Dkt. No. 2. Nevertheless, an information or indictment has not yet been filed against petitioner.

On June 2, 2005, petitioner filed a motion for return of property, Dkt. No 4, in connection with the above-referenced warrant. The Court then issued a show cause order directing the government to demonstrate why the seized property should not be returned to petitioner. Dkt. No. 8. Having reviewed the parties' pleadings, supporting materials, and the available record, the Court ORDERS as follows:

(1) Petitioner's motion for return of property. Dkt. No. 4, is DENIED. Federal Rule of Criminal Procedure 41(g) enables "[a] person aggrieved by an unlawful search and

01 seizure of property or by the deprivation of property” to move the Court of the district in
02 which the property was seized for a return of it. Fed. R. Crim. P. 41(g). To prevail on a
03 motion for return of property, the petitioner bears the burden of proving that he is entitled to
04 lawful possession of the property. *See U.S. v. Martinson*, 809 F.2d 1364, 1369 (9th Cir.
05 1987). The motion may be denied if “the defendant is not entitled to possession of the seized
06 property, the property is contraband or subject to forfeiture, or the government’s need for the
07 property as evidence continues.” *U. S. v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993); *see also*
08 *U.S. v. Cauwenberghe*, 934 F.2d 1048, 1061 (9th Cir. 1987).

09 Here, petitioner has failed to demonstrate he is entitled to lawful possession of the
10 seized goods. Pursuant to a lawful search warrant issued by this Court, the government
11 seized rifle machines and components thereof, currency, vehicle titles, business records, and
12 bank records from petitioner. Dkt. Nos. 9, 10. These items were all seized in connection
13 with ongoing investigations by the Federal Food and Drug Administration and Washington
14 State Department of Health into petitioner’s business, which involves the use of rifle machines
15 to cure disease. Dkt. No. 10. Rifle machines, however, have not been approved for use in this
16 country and are therefore contraband. *See* Dkt. No. 10.

17 Moreover, the government has shown that the federal and state investigations into
18 petitioner’s activities are continuing and that the seized property is necessary for the
19 government to proceed with its investigation. Dkt. No. 9. It has also indicated that the
20 property will be “essential evidence at trial” if and when charges are filed. Dkt. Nos. 9, 10.
21 Additionally, the government intends to initiate forfeiture proceedings with respect to the
22 cash and vehicle titles. *Id.* Thus, petitioner has not demonstrated that he is entitled to lawful
23 possession of the seized property, that the property is not contraband or subject to forfeiture,
24 or the government’s need for the property as evidence does not continue. The motion must
25 therefore be denied.

(3) The Clerk is directed to send copies of this Order to petitioner, and to counsel for respondent.

James P. Donohue
 JAMES P. DONOHUE
 United States Magistrate Judge